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**THIS DISPOSITION
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OF THE T.T.A.B.**

Paper No. 12
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Superior Uniform Group, Inc.

Serial No. 75/832,057

Edward R. Weingram of Weingram & Associates, P.C. for
applicant.

Jeremy M. Klass, Trademark Examining Attorney, Law Office
108 (David Shallant, Managing Attorney.)

Before Hairston, Wendel and Holtzman, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Superior Uniform
Group, Inc. to register the mark MARCOTT for "apparel,
namely, uniforms."¹

The Trademark Examining Attorney has refused
registration under Section 2(e)(4) of the Trademark Act on

¹ Application Serial No. 75/832,057 filed October 26, 1999,
alleging a bona fide intention to use the mark in commerce.
Applicant subsequently submitted an amendment to allege use which
set forth dates of first use of September 1999.

the ground that applicant's mark is primarily merely a surname.

When the refusal to register was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested. We affirm the refusal to register.

The Examining Attorney maintains that the primary significance of the term MARCOTT to the purchasing public is that of a surname and that the term has no other readily recognizable meanings. In support of this position, the Examining Attorney made of record the results of a search of the PHONEDISC POWERFINDER USA ONE database (1999 2nd ed.) which found a total of 400 listings for the surname "Marcott."

Applicant contends that the Examining Attorney has not met his burden of demonstrating that MARCOTT is recognizable to the purchasing public as primarily merely a surname. Applicant points out that the Examining Attorney's search revealed only 400 people with the "Marcott" surname out of approximately 300 million persons residing in the United States. Further, applicant challenges the Examining Attorney's conclusion on the ground that the printout shows that approximately half of the persons with the "Marcott" surname reside in a handful

of states in the Midwest. Thus, applicant maintains that "Marcott" is a rare surname not known to the average purchaser in the United States. Furthermore, applicant argues that MARCOTT has a recognizable non-surname meaning or significance. According to applicant, MARCOTT is a coined term which it made up from combining the first portions of the words "Martin's" and "cotton." Martin's Uniform is a division of applicant and this division manufactures 100% cotton work uniforms. Applicant contends that purchasers of these uniforms will readily recognize that MARCOTT is a "contraction" of "Martin's" and "cotton," especially in view of the label (reproduced below) which is used on the uniforms.

A term is primarily merely a surname if its primary significance to the purchasing public is that of a surname. In re Hutchison Technology, Inc., 852 F.2d 552, 7 USPQ2d 1490 (Fed. Cir. 1988); In re Industrie Pirelli Societa per Azioni, 9 USPQ2d 1564 (TTAB 1988). The initial burden is on the Patent and Trademark Office to establish a prima facie case that the term is primarily merely a surname. In

re *Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985). If that *prima facie* showing is made, then the burden of rebutting that showing, i.e., the burden of showing that the primary significance of the term to the purchasing public is other than that of a surname, shifts to applicant. See *In re Etablissements Darty et Fils*, *supra*.

The determination as to whether a mark's primary significance to the purchasing public is that of a surname takes into account various factors, such as (i) the degree of a surname's rareness; (ii) whether anyone connected with applicant has the surname in question; (iii) whether the term in question has any recognized meaning other than that of a surname; and (iv) whether the term has the "look and sound" of a surname. See *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995).

In this case, we find that the evidence made of record by the Examining Attorney is sufficient to establish, *prima facie*, that the primary significance of MARCOTT to the purchasing public is that of a surname. In addition, we find that applicant has failed to rebut that *prima facie* showing by demonstrating that the primary significance of MARCOTT is other than of a surname.

Although the number of listings for the surname "Marcott" retrieved from the PHONEDISC database is not particularly large as a percentage of the total number of listing in that database (115 million), this is nonetheless sufficient evidence to show the significance of the term as a surname. Admittedly, it appears that "Marcott" is a relatively rare surname. However, even a rare surname is unregistrable if its primary significance to purchasers is as a surname, and there is no minimum number of directory or telephone listings required to establish a prima facie case for refusal under Section 2(e)(4). In re Cazes, 21 USPQ2d 1797 (TTAB 1992); In re Industrie Pirelli Societa per Azioni, *supra*.

Further, we are not persuaded by applicant's argument that MARCOTT has a recognizable non-surname meaning or significance. Applicant may well intend that the purchasing public understand MARCOTT to be a "contraction" of "Martin's" and "cotton." However, there is nothing in this record to establish that the purchasing public does, in fact, recognize this asserted meaning of MARCOTT. We do not believe purchasers would reach this conclusion simply from viewing applicant's labels. In other words, there is nothing on the labels, which would prompt purchasers to shorten "100% cotton by Martin's" to MARCOTT.

We recognize that "Marcott" is not the surname of anyone associated with applicant. Of course, if "Marcott" were associated in some way with applicant, it could well indicate the public recognition of the term as a surname. It is not the case, however, that because no one associated with applicant has been shown to have the "Marcott" surname, purchasers will perceive the term as a non-surname.

Finally, it our view that MARCOTT has surname-like characteristics; that is, "the look and sound" of a surname. In this respect, it is similar to the more frequently encountered surnames of ALCOTT, WALCOTT and PRESCOTT. In short, by "the look and sound," MARCOTT has the structure and pronunciation of a surname, not of an arbitrary designation. *Compare* In re Sava Research Corp., 32 USPQ2d 1380 (TTAB 1994)[SAVA, for secure communications systems, has "the look and sound" of an arbitrary acronym, not a surname].

Decision: The refusal to register under Section 2(e)(4) is affirmed.

Ser No. 75/832,057

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